CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

GLORIA SCOTT AND DEANIA JACKSON	*	
	*	NO. 96-8461
VERSUS	*	DIVISION "I"
	*	SECTION 14
THE AMERICAN TOBACCO COMPANY, INC., ET AL.	*	

* * * * * * *

Transcript of proceedings before The Honorable Richard J. Ganucheau, Judge Pro Tempore, Civil District Court, Parish of Orleans, State of Louisiana, 421 Loyola Avenue, New Orleans, Louisiana 70112, commencing on June 18, 2001.

* * * * *

Tuesday Afternoon Session
March 11, 2003
1:37 p.m.

* * * * *

HUFFMAN & ROBINSON, INC., CERTIFIED COURT REPORTERS
New Orleans, Louisiana (504) 525-1753

APPEARANCES:

GAUTHIER, DOWNING, LaBARRE, BEISER
AND DEAN
Attorneys at Law
(By: Deborah M. Sulzer, Esquire
Bruce C. Dean, Esquire)
3500 North Hullen Street
Metairie, Louisiana 70002

- AND -

HERMAN, HERMAN, KATZ AND COTLAR, L.L.P.
Attorneys at Law
(By: Stephen J. Herman, Esquire)
820 O'Keefe Avenue
New Orleans, Louisiana 70113

- AND -

BRUNO AND BRUNO
Attorneys at Law
(By: Joseph M. Bruno, Esquire)
825 Baronne Street
New Orleans, Louisiana 70113

- AND -

http://legacy.library.ucsf.edu/tid/utq37a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/pghl0001

LEGER AND MESTAYER
Attorneys at Law
(By: Christine L. DeSue, Esquire)
9th Floor
600 Carondelet Street
New Orleans, Louisiana 70130

- AND -

CARTER AND CATES
Attorneys at Law
(By: Omar K. Mason, Esquire)
Suite 1230, Energy Centre
1100 Poydras Street
New Orleans, Louisiana 70163-1230

- AND -

GERTLER, GERTLER, VINCENT AND PLOTKIN, L.L.P.
Attorneys at Law
(By: Michael H. Gertler, Esquire
Louis L. Gertler, Esquire)
127-129 Carondelet Street
New Orleans, Louisiana 70130

- AND -

MURRAY LAW FIRM, APLC
Attorneys at Law
(By: Stephen B. Murray, Esquire)
Suite 2550
909 Poydras Street
New Orleans, Louisiana 70112

- AND -

BENCOMO AND ASSOCIATES
Attorneys at Law
(By: Raul R. Bencomo, Esquire)
Suite 2110, One Poydras Plaza
639 Loyola Avenue
New Orleans, Louisiana 70113
(Attorneys for the Plaintiffs)

JONES, DAY, REAVIS AND POGUE
Attorneys at Law
(By: Mark A. Belasic, Esquire)
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

- AND -

STONE PIGMAN WALTHER WITTMANN, L.L.C.
Attorneys at Law
(By: Phillip A. Wittmann, Esquire)
546 Carondelet Street
New Orleans, Louisiana 70130
(Attorneys for the Defendant,
R. J. Reynolds Tobacco Company)

KING AND SPALDING
Attorneys at Law

http://legacy.library.ucsf.edu/tid/utq37a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/pghl0001

(By: Richard A. Schneider, Esquire
Jack Williams, Esquire)
191 Peachtree Street
Atlanta, Georgia 30303-1763
(Attorneys for the Defendant,
Brown and Williamson Tobacco
Corporation, individually and
as successor by merger to
The American Tobacco Company)

ADAMS AND REESE, L.L.P.
Attorneys at Law
(By: Charles F. Gay, Jr., Esquire
Ronald J. Sholes, Esquire)
Suite 4500, One Shell Square
701 Poydras Street
New Orleans, Louisiana 70139
(Attorneys for the Defendant,
Philip Morris, Incorporated)

SHOOK, HARDY AND BACON, L.L.P.
Attorneys at Law
(By: Gary R. Long, Esquire)
One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105-2118

- AND -
GORDON, ARATA, McCOLLAM, DUPLANTIS
AND EAGAN, L.L.P.
Attorneys at Law
(By: Steven W. Copley, Esquire)
Suite 4000
201 St. Charles Avenue
New Orleans, Louisiana 70170-4000
(Attorneys for the Defendant,
Lorillard Tobacco Company)

SPECIAL MASTER:
Dominic J. Gianna, Esquire
Middleberg, Riddle and Gianna
Suite 3100
201 St. Charles Avenue
New Orleans, Louisiana 70170-3100

REPORTED BY:
CHERYL FOURNET HUFFMAN, RMR, CRR
Registered Merit Reporter
Certified Realtime Reporter
(No. 75009)
Huffman & Robinson, Inc.
One Shell Square, Suite 250 Annex
New Orleans, Louisiana 70139
(504) 525-1753 (800) 749-1753

* * * * *

http://legacy.library.ucsf.edu/tid/utq07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/pghl0001

I N D E X

WITNESSES: PAGE:
WILLIAM RAYMOND MORGAN
Examination by videotape.....15655

SAMUEL D. CHILCOTE, JR.
Examination by deposition.....15681

P R O C E E D I N G S

THE BAILIFF:
Please rise for the jury.
(Whereupon the jury joins the proceedings at this time.)
THE LAW CLERK:
Recess is over. Court will come to order.
THE COURT:
Please be seated.
Mr. Gertler, after the jurors left the courtroom for the luncheon recess, we had a

http://legacy.library.ucsf.edu/tid/utq07a00/pdf
Digitized by the Legacy Industry Documents Library - https://www.industrydocuments.ucsf.edu/docs/pghl0001

discussion about two exhibits. And I asked you if you would confer with the defendants.
Have you and the defense side reached some consensus on that?
MR. LOUIS GERTLER:
Yes, we have. We reached an agreement on those documents. And I can put it on the record, if Your Honor pleases.
THE COURT:
Yes.
MR. LOUIS GERTLER:
We have agreed -- The plaintiffs have agreed to redact on Exhibit 2564 Paragraphs 5 and 6 on Page 3; and on Page 5, the second paragraph starting with "As for litigation."
With those redactions, I think we've reached an agreement on the document. And I will formally introduce it into evidence at this time.
THE COURT:

As Exhibit 2564?
MR. LOUIS GERTLER:
Yes.
MR. SCHNEIDER:
Yes, subject to the objections which Your Honor has overruled, he stated the agreement correctly.
THE COURT:
Then The Court will receive Exhibit 2564 into evidence.
And I've previously ruled on 2252; have I not?
MR. LOUIS GERTLER:
Yes. And I would formally introduce that as well.
THE COURT:
Objection?
MR. SCHNEIDER:
Again, we made an objection, Your Honor has overruled those objections. But subject to that, we've agreed that 2252 would come in; but so would 2552, which is a more complete version of 2252. So both would come into evidence.
THE COURT:
Agreed?
MR. LOUIS GERTLER:
Yes.
THE COURT:
All right. Well, I'll take that as a formal offer of 2552?
MR. SCHNEIDER:

Yes, Your Honor.
THE COURT:
Thank you.
MR. LOUIS GERTLER:
Thank you.

http://legacy.library.ucsf.edu/tid/utq37a00/pdf
Digitized by https://www.industrydocuments.ucsf.edu/docs/pghl0001

THE COURT:
The next order of business is under submission and argued during the luncheon recess. While you folks were relaxing, we were working.
Plaintiffs' submission regarding the admissibility of evidence, certain evidence, I heard arguments and took the matter under advisement. And after considering the argument and the cases cited, The Court rules that the plaintiffs' request to introduce that evidence is hereby denied.
I will announce some brief reasons during the luncheon -- the afternoon break for The Court's ruling on that issue. But that is the ruling at this point.
The order of business for the afternoon, I take it, will be some document reading, Counsel?
MR. MASON:
Yes, Your Honor, along with videos, I believe.
THE COURT:
We had an issue as to Exhibit 1371.02 --
MR. MASON:
Yes.
THE COURT:

-- before the luncheon recess. Has that dispute been resolved?
Page 2, Mr. Belasic, to refresh your memory.
MR. BELASIC:
No, the objection still stands.
THE COURT:
Approach the bench, please.
(Whereupon a bench conference is held at this time as follows:)
THE COURT:
Is your machine off?
MR. MASON:
Yes, it's off.
THE COURT:
Okay. Well, I have a problem in that there was no objection to this exhibit. Now, it's agreed upon that that is not relevant in the case.
MR. LONG:
I apologize. The reason there was no objection is Mr. Copley had this document but he had the wrong number in his folder.
THE COURT:
Well, I mean, do you get two bites?
MR. LONG:
Maybe three?
MR. BELASIC:
In any event, I have no objection to the first page, Your Honor.
THE COURT:
I understand that. And that's my

http://legacy.library.ucsf.edu/id/ulq37a00/pdf Digitized by https://www.industrydocuments.ucsf.edu/docs/pghl0001

dilemma. Clearly, this shouldn't go in.
MR. LONG:
Right.
THE COURT:
And I'm faced with no objection. And that's the light I've been looking at it. You tell me that was something of an oversight, and I accept that.
MR. LONG:
Does that mean that all the money the State of Louisiana gets from the tobacco settlement comes in?
THE COURT:
If there's no objection, the document is in, as I understand it. Now, --
MR. BRUNO:
We're not reading that right now, Gary.
MR. LONG:
Well, but the document is in evidence.
MR. BRUNO:
Okay.
MR. LONG:
And if they ask for it, they can --
THE COURT:
Okay. Can they get a chance to put in parts --
MR. BRUNO:
Sure.
THE COURT:
-- that they want to?
So that your objection then, Mr. Belasic, is with regard to the --

MR. BRUNO:
To the previous order of the court, which no settlement goes in.
THE COURT:
Wait a minute.
MR. LONG:
Exactly.
MR. BRUNO:
Yes.
MR. LONG:
The same thing with ETS.
MR. BRUNO:
Well, now wait a minute.
MR. BELASIC:
Let the Judge talk, please.
THE COURT:
One at a time. Mr. Belasic.
MR. BELASIC:
My objection is limited to the fact that these youths are clearly not class members, there's been no proof they're class members. There's plenty of other data that plaintiffs could put in about people who are in the class on youth smoking, say, before 1996. They have no restrictions on that.
But it is prejudicial to suggest to the

http://legacy.library.ucsf.edu/tid/utq37a00/pdf Digitized by https://www.industrydocuments.ucsf.edu/docs/pghl0001

jury that somehow liability can be premised on people who aren't class members.

MR. BRUNO:

There's no foundation for Mr. Belasic's statement; that is, he can't prove that they're not class members.

THE COURT:

Okay. What about the rest of this?

MR. BRUNO:

The rest of this stuff, Judge, just like the ETS, the reason why I'm not objecting to the ETS is you've already ruled that it's out, you've already ruled that settlements are out. So even though the document hasn't been formally objected to, the portions of it that would be afoul of your previous orders are out.

So they can't talk about the portions of the document that refer to settlement in the same way that I can't talk about the portions of the document that refer to ETS.

THE COURT:

Yes.

MR. LONG:

The document is in evidence. Does that mean that the jury --

MR. BRUNO:

Well, redact it.

MR. LONG:

That's the issue. I mean, I think we've --

MR. BRUNO:

We've already agreed to redact this.

THE COURT:

Don't interrupt him.

MR. BRUNO:

I'm sorry.

THE COURT:

What were you saying?

MR. LONG:

I just think we need to figure out which portions of the document are admissible and redact the rest.

THE COURT:

That's what I hoped would happen over the luncheon recess, and it didn't happen. Now, if y'all want to take another attempt, I'll give you some time. And if I'm required to rule at this point, I'm going to rule.

MR. BRUNO:

I understand.

THE COURT:

Your move.

MR. LONG:

Other than the first page, is this the only thing at issue?

MR. BRUNO:

http://legacy.library.ucsf.edu/tid/utq07a00/pdf
Digitized by the Tobacco Industry Documents Library at UCSF http://www.industrydocuments.ucsf.edu/docs/pghl0001

You mean that we're going to read right now?
MR. LONG:
Well, as far as redacting.
THE COURT:
That is what -- There is no question this comes out, agreed?
MR. BRUNO:
Yes.
THE COURT:
Mr. Belasic has objected to that.
MR. BRUNO:
The other part, I'm saying, comes out.

THE COURT:
Somebody has talked about that.
MR. BRUNO:
The settlement stuff comes out. Do you agree?
MR. LONG:
Yes, it's been excluded.
MR. BRUNO:
Okay. So do we agree to redact it?
MR. LONG:
Yes. And so what I'm getting at is this is the only thing at issue; right?
MR. BRUNO:
Yes. The Court will rule on that.
MR. LONG:
Okay.
MR. BRUNO:
Fair enough.
THE COURT:
The objection to "Youth Tobacco Use" is overruled. And I presume then that before this document gets in as a physical piece of evidence, that it will be sanitized to remove the things that we talked about?
MR. BRUNO:
Yes.
THE COURT:
Okay.
MR. BRUNO:
Judge, while we're here, while we're here, with regard to your previous ruling, I was supposed to get up next and read some

documents that relate to, in particular, the FTC 1997 to 1999 advertising expenditures. I was going to use those advertising expenditures for a different purpose.
What I propose to do is read portions of the Internet sites from R. J. Reynolds and from Brown & Williamson. On those Internet sites, what they say is the only reason why we advertise is to affect brand switchers; we do not advertise at all to entice people to smoke.
I would like to use the FTC advertising

http://legacy.library.ucsf.edu/tid/utq37a00/pdf
Scanned with CamScanner https://www.industrydocuments.ucsf.edu/docs/pghl0001

dollars to show that that is not true. It tends to show, because of the amount of money spent, a billion dollars on advertising that -- and you'll remember this corroborates Dr. Burns' previous testimony -- that there's no amount of brand switching that occurs that could possibly justify spending eight billion dollars. So it goes to the credibility of the defendants' position that they don't advertise to entice people to smoke.

THE COURT:

Well, I understand your argument. And I've thought about it. My problem at this point is that it's a fairly close issue. It's a 403 issue. It's a mistrial issue if I rule wrong. I'm ruling on the conservative side to maintain the integrity of this case at this point.

I'm not suggesting that you have no chance of getting that in the future,

depending on what happens. I can always reverse myself.

MR. BRUNO:

Right.

THE COURT:

But I don't think the door has been opened sufficiently, based on what I heard and the research I did, to allow that. Because I think the amount of dollars is absolutely a staggering number in terms of these jurors' perception. And that's the reason for the ruling. I don't want a trial writ and a mistrial.

MR. BRUNO:

Well, I have a question for you because I'm a little bit, somewhat, a tad confused. I think Russ was arguing for a broad -- a broader thing than what I'm asking for. What I'm asking for is advertising dollars. And I think he was going into profits and all that and research.

THE COURT:

But that's the nose of the camel, okay?

MR. BRUNO:

Okay.

THE COURT:

That's what he was asking for. And it's broader than what you're talking about, absolutely.

MR. BRUNO:

Right. And what I'm asking him here is just here (indicating).

THE COURT:

And I don't think I've got to be any more specific about -- What you're talking about is the camel's nose.

MR. BRUNO:

http://legacy.library.ucsf.edu/id/ulq07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/pghl0001

Precisely.
THE COURT:
And it's not coming in at this point.
MR. BRUNO:
All right.
THE COURT:
Have you got a video? Let me finish with this document.
MR. BRUNO:
Right.
THE COURT:
That will give you a little bit of time to collect your thoughts, okay?
MR. BRUNO:
Right.
THE COURT:
Are you ready to proceed with the rest of this?
MR. MASON:
Yes, I am.
THE COURT:
You understand what we've just --
MR. MASON:
Yes. Thank you, Your Honor.
THE COURT:
Okay.
(Whereupon the bench conference is concluded at this time.)
MR. MASON:
Your Honor, at this time we would like to call up on the -- on your monitor as well as Counsel's monitor Exhibit 1371.02, the one we had up before lunch.
Carl, at this time would you please highlight and enlarge just the portion at the bottom of the document beginning with "Youth Tobacco Use," and displaying that whole chart, please?
I ask that we be allowed to publish at this time, Your Honor, Page 2 of Exhibit 1371.02.
THE COURT:
You may publish that, Counsel.
MR. MASON:
Thank you.
It's entitled "Youth Tobacco Use, Current Cigarette Smoking, Grades 6 Through 8, National." Then there's an asterisk which goes down to the bottom, it says, "Sources: National Youth Tobacco Survey, 2000." National, 11.0 percent; Louisiana, 17.1 percent.
Then there's an indication at the bottom, a footnote, it says, "Louisiana Youth Tobacco Survey, 2001." Boys, 18.1 percent, the same reference; girls, 15.4 percent.
In the third column from the left is "Current Cigarette Smoking, Grades 9 Through 12." National, 28.0 percent; Louisiana, 36.4

http://legacy.library.ucsf.edu/tid/utq37a00/pdf Digitized by https://www.industrydocuments.ucsf.edu/docs/pghl0001

percent. It references the survey. This one references the "Louisiana Youth Risk Behavior Survey, 1997." Boys, 38.2 percent, the same reference; girls, 34.6 percent, the same reference.

That is all that the plaintiffs wish to read off of this particular document, Your Honor, 1371.02.

THE COURT:

All right, Counsel.

MR. MASON:

The next document, Your Honor, is Exhibit Number 0332.01. We would like to offer that into evidence at this time, Your Honor.

THE COURT:

Objection?

MR. COPLEY:

Objection, Your Honor. May we approach?

THE COURT:

Yes.

(Whereupon a bench conference is held at this time as follows:)

MR. COPLEY:

Your Honor, the total exhibit contains a bunch of testimony about environmental tobacco smoke, leukemia, peptic ulcers, various diseases we're not concerned with. I understand they're only going to read a small portion of the document, not that portion.

What we'd like to do is read just those portions and then submit a redacted document

of just those portions.

MR. BRUNO:

Well, we have a problem with the leukemia stuff. I mean, ETS, you're right, absolutely. But the fact that cigarette smoking causes a variety of diseases is all part of the cessation component of this case.

MR. COPLEY:

It may be. But when I just talked to counsel, he told me that you weren't going to read any of that.

MR. BRUNO:

We're not. We're not. We're not. And we can work out the problems in redacting it later, if you want to.

MR. COPLEY:

Yes, we can redact it later. And if we have a problem, we'll come to you on the redaction.

MR. BRUNO:

That's fair.

THE COURT:

Okay. I've forgotten your name. Give it to me again.

MR. MASON:

Mason, Omar Mason.

http://legacy.library.ucsf.edu/tid/utq37a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/pghl0001

THE COURT:
Thank you.
I'm going to take the offer under advisement and wait to see if you can agree on the redaction, okay?
MR. COPLEY:

Okay.
THE COURT:
You've made your offer, you object, I'm going to take the offer and the objection under advisement. But you may publish the portions that you all have agreed on.
MR. MASON:
Okay. Thank you, Your Honor.
(Whereupon the bench conference is concluded at this time.)
MR. MASON:
Your Honor, at this time, we would like to display -- we'd like to publish Page 1 of Exhibit Number 0332.01.
THE COURT:
I'll take the offer of the document and the objection to it under advisement, but you may publish that page of that document.
MR. MASON:
Thank you, Your Honor.
Carl, if you would, please, just highlight the insignia in the corner as well as the heading.
The insignia reads "CDC, MMWR, Surveillance Summaries." "Surveillance for Smoking-Attributable Mortality and Years of Potential Life Lost, by State -- United States, 1990."
Carl, if you would, please, if you would, go to Page 5 of the document.
Your Honor, may we publish Page 5?
MR. COPLEY:

No objection.
THE COURT:
You may publish it.
MR. MASON:
Thank you, Your Honor.
Carl, if you would, please, highlight the very bottom of the document where it starts with "Table 2. State-Specific...." If you could enlarge that.
It says, "Table 2. State-Specific Estimates of Cigarette Smoking Prevalence, by Age and Sex -- United States, 1990." And then it has columns, "State," ages 35 through 64, men percentage, women percentage; and ages 65 and over, men percentage and women percentage.
And, Carl, if you would, if you could move that up. And if we could go on to the next page because it carries over.

http://legacy.library.ucsf.edu/tid/utq07a00/pdf
Created: https://www.industrydocuments.ucsf.edu/docs/pghl0001

And if we may publish -- May we publish the next page, Your Honor?
THE COURT:
You may publish it.
MR. MASON:
Thank you.
On this page, Carl, there's a line that says, "Louisiana." If you can just highlight and enlarge that and put that underneath the other -- the part from the previous page. Thank you.
Okay. Under "Louisiana," it says men ages 35 through 64, it's 32.7 percent; women

ages 35 through 64 is 24.7 percent; men ages 65 and older, 14.9 percent; women ages 65 and older is 8.6 percent.
Carl, if you would highlight the -- if you can enlarge the Table 2 reference, the bottom Table 2 reference again. No, not -- the same one we had up there. It was on Page 5. Sorry.
That table is "State-Specific Estimates of Cigarette Smoking Prevalence, by Age and Sex -- United States, 1990."
The next -- On Page 6, at the bottom, it says Table 3. Would you highlight from Table 3 and the caption that says "State." Just up to that point.
This one is "Table 3. State-Specific Estimates of Smoking-Attributable Mortality, by Sex -- United States, 1990."
If you can do the same thing, Carl, with the next page that you did on the last document.
THE COURT:
You may publish it.
MR. MASON:
Thank you, Your Honor.
And just highlight "Louisiana." Thank you, Carl.
It says, under "State-Specific Estimates of Smoking-Attributable Mortality, by Sex -- United States, 1990, Louisiana," under male, 4,829; under female, 2,058; the total is 6,887; the rate is 388.2; the rank is 40; and

the percentage of all deaths is 18.3.
And that's Exhibit 0332.01. And that's all we have from that document, Your Honor.
THE COURT:
Does defense counsel wish to highlight any portions of that document?
MR. COPLEY:
Nothing at this time, Your Honor.
MR. MASON:
The next document I have, Your Honor, is a very short one. It's 0476.02. We'd like to offer Exhibit 0476.02 into evidence at

http://legacy.library.ucsf.edu/tid/utq37a00/pdf
Digitized by the Tobacco Industry Documents Library at UCSF http://tobaccodocuments.ucsf.edu/docs/pghl0001

this time.
THE COURT:
Objection?
MR. WILLIAMS:
We stand on our prior objections, Your Honor.
THE COURT:
I don't have that before me, Mr. Williams. Do you wish to approach the bench on that issue?
MR. WILLIAMS:
Your Honor, it's fine. We'll withdraw it. It's okay.
THE COURT:
No objection. It will be received. You may publish it.
MR. MASON:
Thank you, Your Honor.
Carl, if you would, please highlight the top corner where it says "STATE SYSTEM." The

middle part is blurry. It says "STATE," it says "State Tobacco Activities Tracking and Evaluation," and it says "SYSTEM."
And could you go down to the next heading, Carl, where it says "Current Cigarette...." Please enlarge that.
It says, "Current Cigarette Smoking Among Adults Aged 18 and Older, 1997." And if you would just highlight the column that says, "State." And the column next to it all the way down to "Louisiana." Or you can highlight just "Louisiana."
Okay. Thank you, Carl.
It says, "State: Louisiana. Prevalence (Percentage): 24.6 percent."
And if you would, go on to Page 2, please, Carl, and display on the monitors for counsel and Your Honor.
May we publish Page 2, Your Honor?
THE COURT:
You may publish it.
MR. MASON:
Thank you.
Just the last line on that page as well as the source underneath there, if you could just highlight that and enlarge that, please. It carries over from the previous page under the column "State." It says, "Median."
Under the column "Prevalence (Percentage)," it says 23.2 percent. And the source, it says "Behavioral Risk Factor Surveillance System."

The last thing on that page, Carl, was the corner where it says "CDC," if you could just enlarge that, please.
It says, "CDC, Centers for Disease Control and Prevention."

http://legacy.library.ucsf.edu/tid/utq37a00/pdf
Digitized by https://www.industrydocuments.ucsf.edu/docs/pghl0001

That's Exhibit 0476.02. That's all we have from that exhibit, Your Honor.
THE COURT:
Anything by defense counsel?
MR. WILLIAMS:
No, Your Honor.
THE COURT:
Nothing?
MR. MASON:
The last exhibit I have, Your Honor, is Exhibit Number 0475.02.
THE COURT:
Objection?
MR. MASON:
I'd like to offer that into evidence.
MR. WILLIAMS:
No objection, Your Honor.
THE COURT:
No objection. It will be received in evidence. You may publish it.
MR. MASON:
Thank you, Your Honor.
Carl, if you can just enlarge the top corner again, Carl.
That's the last document. It says "STATE, State Tobacco Activities Tracking and Evaluation, SYSTEM."

If you can highlight the next caption. And the line that says, "Louisiana."
It says, "Current Cigarette Smoking Among Youth, 1997." Under "State," it's "Louisiana." "Prevalence (Percentage): 36.4 percent."
The last thing, Carl, is the source at the bottom of the page.
It says "Source: Youth Risk Behavior Survey (Weighted)."
That's all we have on this document, Your Honor.
THE COURT:
Does defense counsel wish to present any portion of that document to the jury?
MR. WILLIAMS:
No, Your Honor.
MR. MASON:
Your Honor, the next item we have is not a document. It's a video. It's a brief video clip. It's Document Number 3122.02. It's regarding the Superman 2. The document that references Superman 2 is 3535. But this exhibit is 3122.02.
MR. SHOLES:
No objection.
MR. MASON:
We would like to display 3122.02 to the jury, Your Honor.
THE COURT:
Yes. If there's no objection to the document, you may display the document.

http://legacy.library.ucsf.edu/tid/utq37a00/pdf
Digitized by the Tobacco Industry Documents Library at UCSF http://www.industrydocuments.ucsf.edu/docs/pghl0001

MR. MASON:
Thank you, Your Honor.
(Whereupon the above-referenced videotape clip is played back at this time.)
MR. MASON:
That's all we have on 3122.02, Your Honor. We would like to admit that into evidence.
THE COURT:
If there's no objection, it will be received.
MR. MASON:
Thank you, Your Honor.
MR. BENCOMO:
Good afternoon, Your Honor.
Good afternoon, ladies and gentlemen of the jury. My name is Raul Bencomo. I previously introduced myself to you during the jury selection process. I know it is tough to compete with Superman, but I'm going to have to read some documents that I'd like to offer and share with you.
The first document that we'd like to call up for the benefit of The Court and counsel is document 0048.01.
And I understand that there is an objection, Your Honor, so may we approach?
THE COURT:
Yes.
(Whereupon a bench conference is held at this time as follows:)
MR. COPLEY:

Your Honor, we object to the document in total because it has a number of references to environmental tobacco smoke and otherwise. Now, Mr. Bencomo told me he's not going to read those today.
And so what we'd like to do is for you to note my objection, we could get together and redact the document, and the objection were to remain pending until that.
MR. BENCOMO:
And I have so agreed to redact anything about ETS, Judge.
MR. COPLEY:
And maybe some other things. But we may have to get back to you on that.
But we have another objection, Your Honor. At the top of this page, Page 2, Mr. Bencomo has proposed to designate that 50 billion in medical expenses will be -- let me see how they say it -- 50 billion in medical expenses and 50 billion in indirect costs. Additionally, they total it up over here in this corner as 100 billion each year.
I have a 403 objection to that, Your Honor. It doesn't -- It's not Louisiana related. I assume it's a national figure.

http://legacy.library.ucsf.edu/id/ulq07a00/pdf Digitized by https://www.industrydocuments.ucsf.edu/docs/pghl0001

Just throwing that figure out doesn't do anything. He gets all of his numbers in through the people that are going to -- these numbers on the front.

MR. BENCOMO:

Which I understand you don't have any

objection; correct?

MR. COPLEY:

Well, I mean, I have objections to the document in total; but I don't have an objection to showing that to the jury, no.

THE COURT:

So --

MR. COPLEY:

Especially concentrating, Your Honor, on this one at the top: 50 billion in medical expenses, 50 billion in indirect costs, I assume totaling up to 100 billion here.

MR. BENCOMO:

Judge, this is a CDC document. It's a public document. And, you know, those are just the facts. It's not advertising expenditures; it is medical expenditures that are part of his report.

THE COURT:

Am I missing something on the first page?

MR. BENCOMO:

No, because it follows.

MR. COPLEY:

In fact, it stops right there.

THE COURT:

So the paragraph reads: "An estimated 48 million adults annually smoke cigarettes."

MR. BENCOMO:

And all of those figures are already in evidence.

THE COURT:

If you're going to show the fact that it's a national figure, I'm going to allow it. You have to show that last line.

MR. BENCOMO:

That's exactly why I'm going to show this entire page.

MR. COPLEY:

Your Honor, if I may, they already have it in. They already have 48 million adults smoking, they have 400,000 deaths each year they get in. They don't need to put in the 50 billion medical expenses and indirect costs totaling up to 100 billion a year. That number's out there by itself, it doesn't mean anything, it shouldn't be put in. It's unfair prejudice. It doesn't have any probative value to this case.

MR. WILLIAMS:

Your Honor, I have a separate objection

http://legacy.library.ucsf.edu/tid/utq37a00/pdf Generated https://www.industrydocuments.ucsf.edu/docs/pghl0001

if you want to -- if I could be heard.
THE COURT:
On that same portion of the document or somewhere else?
MR. WILLIAMS:
Somewhere else.
MR. BENCOMO:
Well, let me just finish this up, Judge. I mean, as far as the probative value, there is no question but everybody has been talking about the numbers, the number of deaths, the number of smokers. And the concomitant result of that is the amount of

medical expenditures.
THE COURT:
All right. Let me hear what Mr. Williams has to say.
MR. WILLIAMS:
Your Honor, -- I'm sorry. Go ahead.
THE COURT:
I'm ready to hear what Mr. Williams has to say.
MR. WILLIAMS:
This document arises from the Master Settlement Agreement and how the states are using the monies. And so those deaths that they're talking about relate to the cost. That money that they're talking about relates to the purported cost to the states, which arose out of states' Attorneys General's lawsuits. That has absolutely nothing to do with this case.
And that has been stipulated out, any settlement-related issues by stipulation we read into the record by Mr. Dean that I have a copy of right here.
THE COURT:
Yes.
MR. BENCOMO:
This does not relate to settlement; this relates to actual costs, Judge.
MR. WILLIAMS:
That entire document is entitled "States' Investment in Tobacco Control" in the Master Settlement Agreement. The entire

document is based on that.
MR. BENCOMO:
There is no Master Settlement Agreement mentioned in here, Jack.
MR. WILLIAMS:
Yes, here it is.
MR. BENCOMO:
If there is, we'll redact it.
MR. WILLIAMS:
I'll show you.
MR. BENCOMO:
I've agreed to redact any mention of any

http://legacy.library.ucsf.edu/tid/utq37a00/pdf
Created: https://www.industrydocuments.ucsf.edu/docs/pghl0001

Master Settlement Agreement with Mr. Copley. Is that not correct, Steve?

MR. COPLEY:

Yes, you did.

MR. WILLIAMS:

Well, it says, "Targeting Tobacco Use."

MR. BENCOMO:

You're on the wrong document, Jack. What are you looking at?

MR. WILLIAMS:

I grabbed the wrong one. Isn't it this document (indicating)?

MR. BENCOMO:

No, you're looking at the wrong document.

MR. WILLIAMS:

0048.

MR. BENCOMO:

0048.01.

MR. WILLIAMS:

I'm sorry. I apologize. I had -- The .02 and the .01 caught me this time.

THE COURT:

Okay. You have no objection?

MR. WILLIAMS:

No, I'll stand by Mr. Copley's objections.

THE COURT:

Mr. Copley's objections to the language at the bottom of the first page and the first paragraph on the second page are overruled. You can show that to the jury.

MR. BENCOMO:

Thank you, Judge.

THE COURT:

Make your offer. I'll take the offer and the objections under advisement. And if you all can agree to sanitize it, it will come in; otherwise, I'll rule on it as it is.

MR. BENCOMO:

Thank you, Judge.

(Whereupon the bench conference is concluded at this time.)

MR. BENCOMO:

Your Honor, thank you.

At this time we would like to publish the first page of 0048.01.

THE COURT:

The document has been objected to. I will take the offer and the objection under advisement. And subject to the ability to agree on sanitizing the document, you may

publish Page 1.

MR. BENCOMO:

Thank you, Your Honor.

Carl, could you please pull that first page up? Thank you.

http://legacy.library.ucsf.edu/id/ulp37a00/pdf
Digitized by https://www.industrydocuments.ucsf.edu/docs/pghl0001

Carl, could you please highlight the entire page beginning with the title "Targeting Tobacco Use." And just go all the way to that section. Thank you very much. And would you please blow that up.

"Targeting Tobacco Use: The Nation's Leading Cause of Death at a Glance -- 2000. Cigarette Smoking Anytime in the Past 30 Days, by Grade in School -- United States, 1991 and 1997."

It is a bar chart that shows the percent of smokers for the years 1991 and 1997. For purposes of the record, the bar chart that is white is for the year 1991; the bar chart that is dark or black is for the year 1997.

For the ninth grade for the year 1991, the percentage was 23.2 percent; for the year 1997, the same ninth grade, 33.4 percent.

For the tenth grade, for the year 1991, 25.2 percent; for the year 1997, 35.3 percent.

For the eleventh grade, for the year 1991, 31.6 percent; for the year 1997, 36.6 percent.

For the twelfth grade, for the year 1991, 30.1 percent for the year 1991; and 39.6 percent for the year 1997.

The article continues, and I quote, "Today, nearly 3,000 young people across our country will begin smoking regularly. Of these 3,000 young people, 1,000 will lose that gamble to the diseases caused by smoking. The net effect of this is that among children living in America today, five million will die an early, preventable death because of a decision made as a child." Donna E. Shalala, Ph.D., Secretary, United States Department of Health and Human Services.

Carl, would you please on that same page now highlight what is left of that page where it begins "Tobacco Use in the United States." And if you will then go up to the very next page that follows and highlight the remainder of that paragraph which begins on Page 1.

THE COURT:

You may publish it.

MR. BENCOMO:

Thank you, Your Honor.

"Tobacco Use in the United States. An estimated 48 million adults in the United States smoke cigarettes...."

If you will blow that up, please. Are you able to blow that up, Carl?

"An estimated 48 million adults in the United States smoke cigarettes, even though this single behavior will result in death or disability for half of all regular users. Tobacco use is responsible for more than

http://legacy.library.ucsf.edu/tid/utq07a00/pdf Digitized by https://www.industrydocuments.ucsf.edu/docs/pghl0001

430,000 deaths each year, or one in every five deaths. Paralleling this enormous health toll is the economic burden of tobacco use: More than 50 billion in medical expenditures and another 50 billion in indirect costs."

To the right hand of that at the page, there is a box that reads "Smoking-related illnesses cost the nation more than 100 billion dollars each year."

Thank you, Carl. Now, from that same page, if you would be kind enough to highlight the pie chart and the bar chart that appear on that second page. And if you will be kind enough to blow those up, I would appreciate it. Thank you.

The left-hand side that contains the pie chart reads as follows: "430,000 United States deaths attributable each year to cigarette smoking."

And there's an asterisk that coincides or correlates with the bottom of that chart which reads: "Average annual number of deaths for the years 1990 through 1994."

And the pie chart has the following statistics: Lung cancer, 123,000 deaths; coronary heart disease, 98,000 deaths; chronic lung disease, 72,000 deaths; other diagnoses, 81,000 deaths; stroke, 24,000 deaths; other cancers, 32,000 deaths.

To the right-hand of the pie chart is the bar chart that reads as follows: "Actual

Causes of Death, United States, 1990." And the bar chart has a number of categories that correlate at the bottom with percentage of all deaths.

And the categories from least to most, I will read as follows: Illicit drug use, less than 5 percent; motor vehicles, less than 5 percent; sexual behavior, less than 5 percent; firearms, less than 5 percent; pollutants/toxins, less than 5 percent; infectious agents, 6 percent; alcohol, 7 percent; poor diet/lack of exercise, between 14 and 15 percent; tobacco at the very top, between 19 and 20 percent.

And that particular chart ends as follows, and I'll read, "The percentages used in this figure are composite approximations derived from published scientific studies that attributed deaths to these sources."

Now, Carl, if you would be kind enough to go to your Page 6, the very bottom of that page where it reads "Prevalence of Cigarette Smoking."

And may we publish that, Your Honor? And, also, Page 7.

THE COURT:

http://legacy.library.ucsf.edu/tid/utq07a00/pdf Scanned with CamScanner https://www.industrydocuments.ucsf.edu/docs/pghl0001

You may publish them.
MR. BENCOMO:
Thank you, Your Honor.
Would you highlight and blow up the bottom of that page where it reads "The prevalence of cigarette smoking...." And if

you would be kind enough to superimpose that with the state statistics. And highlight Louisiana.
And, also, Carl, the very top category that reads "State" and the breakdown of adults and youth, if you would put that in between, please. Thank you. And if you would highlight those.
The prevalence of cigarette smoking among adults and youths in the United States, 1997, state specific for Louisiana, the chart under "Adults" shows 25.5 percent; under "Youth," 36.4 percent.
And then, Carl, if you'd be kind enough just to go to the next page to show the source of this document for the benefit of the jury.
May we publish this, Your Honor?
THE COURT:
Yes.
MR. BENCOMO:
Thank you.
And if you will blow that up and highlight it. And the source is the United States Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention.
And that's all that we have on that particular document, 0048.01, which we offer now subject to Your Honor's earlier instructions.
THE COURT:

Do the defendants wish to highlight any portions of that document for the jury?
MR. COPLEY:
No, Your Honor.
MR. BENCOMO:
Thank you, Your Honor.
The next document that we would ask to offer is Document 0448.02. And I understand that there is an objection, so we would ask to approach the bench.
THE COURT:
Yes.
(Whereupon a bench conference is held at this time as follows:)
THE COURT:
Objection?
MR. WILLIAMS:
Your Honor, I had the wrong document last time. This is the document that I was

http://legacy.library.ucsf.edu/tid/utq37a00/pdf Generated: https://www.industrydocuments.ucsf.edu/docs/pghl0001

talking about. It's about how the states across the country invested the money from the Master Settlement Agreement. And it also talks about settlement of the states' lawsuits.

Both of those issues are precluded by the motion in limine that Your Honor granted and, also, the stipulation by plaintiffs. And it's rife throughout the document. It's not just one section. It talks about it generally.

Secondly, this document talks about the burden on the various states of tobacco use,

what a burden it is on state coffers. And that certainly is irrelevant to any issue this jury is supposed to decide. The document says that, right on its face, that it's a summary of how the states used the money in the settlement, the MSA.

So under Article 403, it's irrelevant, it violates the motion in limine that Your Honor granted and also the stipulation in the case which I was showing Your Honor a copy of last time. And any reference to any settlement is precluded.

MR. COPLEY:

Your Honor, --

MR. BENCOMO:

Your Honor, my response to that is, number one, that I have already agreed with Mr. Copley to redact anything that has to do with MSA.

But, more importantly, if Your Honor will look at what is actually physical Page 15 of this chart, what it has is statistics on youth tobacco use, which is Louisiana specific, adult tobacco use in Louisiana; and the health impact and the costs to the individuals, the lung cancer death rate, all of these statistics dealing with 1990 through 1994, long before the MSA even came into effect.

There is no question whether this document is relevant to what we are trying to show to this jury. And all it addresses is

the death rate due to cigarette smoking, the incidence of smoking among people with certain degrees of education. And it's certainly relevant to this issue.

MR. WILLIAMS:

Your Honor, the cost to the state here, the cost that Louisiana spends on smoking is not relevant, it's not relevant to any issue this jury has to decide. It's not the element of any claim that the plaintiffs are making, the dollar amount of costs.

MR. COPLEY:

http://legacy.library.ucsf.edu/tid/utq37a00/pdf
Digitized by the Tobacco Industry Documents Library at UCSF http://www.industrydocuments.ucsf.edu/docs/pghl0001

Your Honor, I would like to lodge --
THE COURT:
Is it only this page that's numbered 60 that you want to show to the jury?
MR. BENCOMO:
Well, I want to show this first page, obviously, to show the source. And the second page, which talks about --
MR. COPLEY:
Can I stop you right there?
The second page, he wants to show that second sentence, "Annually tobacco uses causes 430,000...." I've got a cumulative objection. We just had that evidence on not two minutes ago, 430,000 and 50 billion. That's what I just argued to Your Honor and you let in. They just put that in two minutes ago, Your Honor, in another report.
MR. BENCOMO:
And then Page 5, physical Page 5, this

paragraph, which Mr. Copley already indicated to me he does not have an objection to, the health consequences, physical Page 5, this paragraph.
MR. COPLEY:
Well, the only objection I have, again, that's cumulative. We have 430,000 deaths. They just put that on the screen twice in the last document.
MR. WILLIAMS:
In addition, Dr. Burns, Dr. Cummings and Dr. Henningfield testified to all this stuff.
MR. BENCOMO:
But, Judge, these are --
MR. WILLIAMS:
It's cumulative with not only what they're doing today but what the jury has heard all along.
MR. BENCOMO:
But, Judge, this takes 30 seconds. These are the actual documents that the jury is going to have in evidence. They are Louisiana specific.
These folks keep on arguing about the fact that, at the end of the day, we're not going to have made or met our burden in connection with this. And these are the documents --
THE COURT:
The only issue is relevance and 403. And the cumulative effect, I don't put much credence in the cumulative effect. If we

only said things once in this case, it would already be over. So we're accumulating a lot.
So as I understand it, Mr. Bencomo, you wish to display the cover sheet?

http://legacy.library.ucsf.edu/tid/utq07a00/pdf
Digitized by the Legacy Industry Documents Library - https://www.industrydocuments.ucsf.edu/docs/pghl0001

MR. BENCOMO:
The cover sheet, the Executive Summary, which is just that second sentence.
THE COURT:
The second sentence?
MR. BENCOMO:
Yes.
THE COURT:
"Annually, tobacco use causes...."
MR. BENCOMO:
"Most people begin using tobacco in early adolescence. Annually, tobacco...." And then end there. Judge, I'll be finished with this document a lot quicker than stating this objection.
"The Health Consequences of Tobacco Use," one paragraph, which Mr. Copley, when we were negotiating this, indicated to me he did not have an objection to. And then the Louisiana statistics.
MR. COPLEY:
That was before I realized the cumulative effect. That was before I realized the cumulative effect.
Let me add one thing. You see this box right here? It says "Youth Tobacco Use," it says "Data for Louisiana Are Not Available."

That box ought to come out.
MR. BENCOMO:
But what you have to look at is that this is any tobacco use, okay? The national statistic is 9.2 percent. I'm going to tell the jury that the data for Louisiana is not available; however, for grades ninth through twelfth, it is available.
THE COURT:
All of the objections are overruled subject to your agreement as to what you're going to display to the jury.
MR. WILLIAMS:
Your Honor, the document is not coming into evidence. So he's just reading his portions to the jury; is that right?
MR. BENCOMO:
We're going to work, again, on redacting the MSA issues and all of those that Mr. Copley and I agreed upon.
THE COURT:
In the past, I've taken the offer and the objections under advisement subject to an attempt to agree to sanitize it to everybody's satisfaction. If it's not sanitized to everybody's satisfaction, the offer and the objection, I'll rule on it as it is.
MR. WILLIAMS:
All right. Thank you, Your Honor.
(Whereupon the bench conference is concluded at this time.)

http://legacy.library.ucsf.edu/tid/utq07a00/pdf
Digitized by the Tobacco Industry Documents Library at UCSF http://www.industrydocuments.ucsf.edu/docs/pghl0001

MR. BENCOMO:
Thank you, Your Honor.
At this time, Your Honor, we would ask that Carl please pull up Document 0448.02 and that you display it for the benefit of The Court and opposing counsel.
Your Honor, may we publish the first page of that document?
THE COURT:
You may publish it.
MR. BENCOMO:
Thank you, Your Honor.
Carl, would you be kind enough to highlight just the words in that document, meaning the first half of the page and then the bottom third of the page.
And it reads, and I quote, "Investment in Tobacco Control, State Highlights 2001."
And then the source, Carl, which is at the bottom, if you would be kind enough to blow those up.
United States Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.
Thank you, Carl. If you would be kind enough to go to the next page and highlight the Executive Summary and the second and third sentences of the very first paragraph.
May we publish, Your Honor?
THE COURT:

You may publish it.
MR. BENCOMO:
Thank you, Your Honor.
And then just the second and third sentences, please, in that first paragraph where it begins "Most people...." Thank you, Carl.
"Executive Summary. Most people begin using tobacco in early adolescence. Annually, tobacco use causes more than 430,000 deaths in the nation and costs approximately 50 to 70 billion dollars in medical expenses alone."
Carl, if you would be kind enough to now go to the 15th physical page of the document that has the Louisiana-specific statistics.
Your Honor, may we publish this page?
THE COURT:
Yes, you may publish it.
MR. BENCOMO:
Thank you, Your Honor.
And, Carl, I'm going to ask you to please highlight the first half of the page so that I can kind of break it down for the jury's benefit.
If you would be kind enough maybe to

http://legacy.library.ucsf.edu/id/ulq37a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/pghl0001

also highlight on the left-hand side where it reads "Louisiana" since this is state specific. I don't know if you can do that. But if you can, I'd appreciate it. And if you could just blow that up.

And I will now read this for the benefit

of the jury. It's a little hard to read. The left-hand side or the left-hand margin of this page reads "Louisiana" since this is state specific. The upper left-hand corner reads "Centers for Disease Control and Prevention." And the heading is "Number of Louisiana Youth Projected to Die Prematurely From Their Smoking: 106,037." Then below that it reads "Adult Tobacco Use in Louisiana."

And just below that it reads "Current Cigarette Smoking Among Adults Aged 18 and Older, 1999." And then the bar chart or the chart, rather, has several columns on the left-hand side beginning with "All States (Median)" being 22.7 percent; "Louisiana Overall" is 23.6 percent.

And the rest is Louisiana specific. Men, 26.9 percent; women, 20.7 [sic] percent; less than twelve years of education, 25.4 percent; twelve years of education, 27.6 percent; more than twelve years of education, 18.1 percent; 18- to 24-year-olds, 29.1 percent; 25- to 44- year-olds, 28.5 percent; 45- to 64-year-olds, 22.2 percent; and 65-and-above-year-olds, 9.6 percent.

Now, Carl, I'd like if you could isolate just below that the "Youth Tobacco Use." Thank you.

Under "Youth Tobacco Use," for grades sixth through eighth, current cigarette smoking, the national figure is 9.2 percent.

For Louisiana, for boys and girls, the data, according to this document, was not available.

The same thing to the right-hand side for grades ninth through twelfth, current cigarette smoking on a national level would be 28.5 percent. If you look at how it correlates to the left-hand corner. For Louisiana, it's 36.4 percent; the boys in Louisiana are 38.2 percent; and the girls are 34.6 percent.

Now, if you'd be kind enough to pull up and blow up the health impact and costs related to that. And that is Louisiana specific. Thank you, Carl.

"Average Annual Deaths Related to Smoking for the Years 1990 Through 1994." Overall, 7,075; men, 4,837; women, 2,238; the death rate is 388 per 100 thousand; the rank

http://legacy.library.ucsf.edu/tid/utq07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/pghl0001

is Number 44.

The next column has the "Average Annual Years of Potential Life Lost." And it's calculated, if you correlate that to the asterisk, to life expectancy for the years 1990 to 1994. "104,813 years or an average of 14.8 years for each death due to smoking."

The next and furthest column on the right is the medical costs related to smoking for the year 1993. And those are as follows: "Ambulatory costs, 171 million 810 thousand; hospital costs, 248 million 360 thousand; nursing home costs, 254 million 220 thousand;

drug, 50 million 770 thousand; other, 118 million 30 thousand; the total cost for the year 1993, 843 million 190 thousand.

And just below that, the smoking attributable Medicaid expenditures for Louisiana for the fiscal year 1993 were 417 million 26 thousand.

Now, Carl, would you be kind enough to pull up the bottom chart that reads "Lung Cancer Death Rate"? And that compares the United States to Louisiana. For the United States, the lung cancer death rate is 37.3; whereas, for Louisiana, it's 45.4.

Thank you, Carl. You may take that down. I would ask you to please go back to Page 5 of this document.

May we publish this page, Your Honor?

THE COURT:

Yes, you may publish it.

MR. BENCOMO:

Thank you, Your Honor.

And, Carl, if you would be kind enough to highlight and blow up the paragraph that reads "The Health Consequences of Tobacco Use." Thank you, Carl.

And I quote, "Tobacco use is the singlemost preventable cause of death and disease in our society. Annually, this country's history of tobacco use causes more than 430,000 deaths.

"Recent and current tobacco use will continue to account for additional hundreds

of thousands of deaths in the United States every year for much of the first half of this century. Tobacco use is addictive. More than 47 million adults in the United States smoke cigarettes, and nearly 70 percent of them want to quit, but only 2 1/2 percent are able to quit permanently each year.

"Most smokers start smoking as adolescents. Each day more than 6,000 United States youths under the age of 18 years try their first cigarette, and more than 3,000 become daily smokers.

http://legacy.library.ucsf.edu/tid/utq07a00/pdf
Digitized by the Legacy Industry Documents Library - https://www.industrydocuments.ucsf.edu/docs/pghl0001

"Tobacco use among children and adolescents remains alarmingly high; and if current rates of smoking persist, an estimated five million of today's children in the United States will eventually die from smoking-attributable diseases. Tobacco use among young people remains one of our most critical public health priorities."

Thank you, Carl.

Your Honor, that's all we have in connection with these documents.

Thank you, ladies and gentlemen of the jury. We appreciate your attention.

THE COURT:

Do the defendants wish to read any portions of that document to the jury?

MR. COPLEY:

No, Your Honor.

THE COURT:

All right.

MR. STEPHEN HERMAN:

Your Honor, the next thing we have is the testimony of William Morgan, which I believe is around 34 minutes. Should we play that before --

THE COURT:

We'll take our afternoon recess at this point, ladies and gentlemen. Seven or eight minutes after. Mr. McCoy will let you know.

(Whereupon the jury is excused at this time.)

THE COURT:

Let the record reflect the jury has left the courtroom.

Anything for the record by plaintiffs' counsel?

MR. MURRAY:

No, Your Honor.

THE COURT:

Defendants?

MR. WITTMANN:

No, Your Honor.

THE COURT:

I'm going to give each side a memorandum that has the requested time off during June, July and August with photocopies of the book pages. And once you look at it, you'll see what my dilemma is. And if any of those requests are amended or deleted, it would help me decide when we are going to work during those months. And we can deal with it tomorrow.

I just want to get it in your hands today and let you know that I'm considering it and I'll have to make some decisions. But any deletions or amendments to those requests would be helpful.

http://legacy.library.ucsf.edu/tid/utq37a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/pghl0001

We'll recess until about five after.
(Whereupon a brief recess was taken at this time from 2:54 o'clock p.m. to 3:09 o'clock p.m.)
THE BAILIFF:
All rise for the jury, please.
(Whereupon the jury joins the proceedings at this time.)
THE LAW CLERK:
Court will come to order.
THE COURT:
Mr. Herman.
MR. STEPHEN HERMAN:
Thank you, Your Honor.
Good afternoon. We'll show you the testimony of William Ray Morgan who was an analytical chemist with Philip Morris.
(Whereupon the above-referenced videotape is played back at this time as follows:)
QUESTION: Would you state your name for the record, please.
ANSWER: It's William Raymond Morgan.
QUESTION: Can you briefly describe for us your work experience, including military experience from the time you completed your education to 1992.

ANSWER: I received my Ph.D. in 1970. Upon my completion of my military service, which was in March of 1972, I had obtained a position with Philip Morris. And, at the end of March, began work with Philip Morris as an analytical chemist in the Analytical Research Division. I worked in that division until 1984. And in February of 1984, I transferred to the Biochemical Research Division. And I was in that division until I was released from Philip Morris in 1992.
QUESTION: Why did you transfer over to the Biochemical Research Division?
ANSWER: I requested it.
QUESTION: And why did you make that request?
ANSWER: Work that I was doing with -- in the Analytical Research Division with trace metal analysis. In putting together my plans for the research that I wanted to do for 1984, management had decided that they did not want to pursue that area of research. They suggested that it might be more appropriate for that research to be done in the Biochemical Research Division.
I contacted the manager of the Biochemical Research and met with him. That was Jim Charles at the time. He was not interested in pursuing that research; but suggested that he had an opening in the nitrosamine group, if I would be interested in that. And I said that I would be

http://legacy.library.ucsf.edu/tid/utq07a00/pdf Digitized by https://www.industrydocuments.ucsf.edu/docs/pghl0001

interested. And the transfer took -- occurred shortly thereafter.

QUESTION: That was in 1984. Do you remember the month?

ANSWER: February.

QUESTION: And in February of 1984, did you pretty much immediately go over to the nitrosamine group?

ANSWER:yes.

QUESTION: What was the nitrosamine group?

ANSWER: It was a group within the Biochemical Research Division that were setting nitrosamines.

QUESTION: What is a nitrosamine?

ANSWER: It's a secondary amine that has an NO group attached to the nitrogen in the amine.

QUESTION: And do you know how these nitrosamines are formed in cigarette or tobacco smoke?

ANSWER: The chemistry of how they're formed or the -- They are formed in two ways. In the growing of tobacco, nitrosamines are formed during either the growing and the curing process. And these are referred to as or we refer to them as endogenous nitrosamines. And those were what we refer to as tobacco-specific nitrosamines because they're alkaloid or their origin for the organic group were the alkaloids that were in tobacco.

During the smoking of tobacco, there are additional nitrosamines of the same type, three -- there are really three major ones, NNN -- referred to as NNN, NAT and NNK. They are those three.

QUESTION: Are you familiar with the research concerning whether nitrosamines are carcinogenic compounds?

ANSWER: I'm familiar with what's in the literature.

QUESTION: Now, NNN, NNK and NAT all are formed during the smoking of tobacco; is that correct?

ANSWER: They're formed during the growing of tobacco, during either the growing process and curing process. And they're also formed during the burning of the cigarette, during the combustion of the cigarette.

QUESTION: Now, does the age of the smoke have anything to do with the level of volatility of the nitrosamines?

ANSWER: What smoke are we talking about?

QUESTION: Sidestream smoke.

ANSWER: Does it have any -- Would you --

http://legacy.library.ucsf.edu/tid/utq07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/pghl0001

QUESTION: Does it have any relationship to the level of volatility of the sidestream smoke, the age of the sidestream smoke?
ANSWER: I don't like to use the word "volatility." I would just say the amount of nitrosamine that's in the aged smoke, NNK is

higher in aged smoke than it is in fresh smoke, which is collected directly off the cigarette.
QUESTION: And how do you know that?
ANSWER: I did studies.
QUESTION: What studies did you do?
ANSWER: There was a chamber that was constructed. We referred to it as a sidestream chamber. It was -- We constructed -- One was built in Richmond in the late 1980s. They had previously or -- and I presume still exist -- one that was built in Switzerland at the research facility in Neuchatel where they studied the aging of smoke and studied a number of different parameters.
QUESTION: Now, when this research was conducted, did you use actual cigarettes to do the research?
ANSWER: We used reference cigarettes.
QUESTION: What was the reason for requesting that the flavorings and the additives not be added?
ANSWER: Because if they were going to do that, we could just get production cigarettes off the line. And we were told not to do nitrosamine studies on production cigarettes.
QUESTION: Who told you not to do nitrosamine studies on production cigarettes?
ANSWER: Management.
QUESTION: And the instruction that you

were given not to use production cigarettes, that was made clear to you immediately upon beginning that job?
ANSWER: The first part of the work that I did was actually learning the procedures that were in place for the collection and the analysis.
And in that case we were just using reference cigarettes. But then when it was time for me to start actually designing experiments to study, it was -- I was told that we would not use production cigarettes but would use reference cigarettes.
QUESTION: Did you ask why?
ANSWER:no.
QUESTION: Did you know why?
ANSWER: I think I had a pretty good idea why.
QUESTION: Did you ever have occasion to

http://legacy.library.ucsf.edu/tid/utq07a00/pdf
Digitized by the Legacy Industry Documents Library - https://www.industrydocuments.ucsf.edu/docs/pghl0001

actually test a production cigarette?
ANSWER: Yes.
QUESTION: And how did that happen?
ANSWER: It was in the sidestream chamber in the aging of sidestream smoke. They were -- We had initially set the chamber up so that the smoking machine would use a reference cigarette that was similar to Marlboro. And there had been a request by someone -- I don't know who -- to run a cigarette that was longer and slimmer that represented -- that was akin to a Virginia Slim.

And there needed to be modifications to the smoking machine because it was remote controlled. And the inserts in the smoking machine that actually held the cigarette needed to be changed. And, also, the remote, the loading parameters where the cigarette was actually loaded and lit, those mechanical changes had to be made to the smoking machine.
And in making and running those tests to set up to do the experiments, we were still collecting information when runs were made to develop the database for nitrosamines in environmental tobacco smoke. Or in aged sidestream smoke, I guess I should refer to it. And we knew that run was being made, that they were going to run a different cigarette other than the ones we had been running. And nitrosamines were collected and they were given to me for analysis.
QUESTION: And --
ANSWER: I didn't know what the cigarette was at the time when I did the analysis.
QUESTION: And when you did the analysis, what result did you find?
ANSWER: I found a very high level of NNK in the aged sidestream.
QUESTION: And how much higher was the nitrosamine level in the Virginia Slims cigarette?
ANSWER: It was about approximately ten

times higher than we had measured with nonreference cigarettes.
QUESTION: And when you say ten times higher, can you quantify that?
ANSWER: The NNK, I'm referring now to the NNK, and I don't like to speak of nitrosamines as a group but relative -- but prefer to speak of the individual nitrosamine.
NNK in, say, mainstream smoke would be approximately 75 to 100 nanograms per cigarette. In fresh sidestream smoke, that's

http://legacy.library.ucsf.edu/tid/utq07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/pghl0001

collected just immediately right off the cigarette, it would increase to approximately 200 to 400, depending on what your blend was. So it would average approximately about 300 nanograms per cigarette.

When you aged in the chamber, the aged smoke, it would go up, the NNK would increase to approximately 1200 to 1500 nanograms per cigarette. And what we measured in this particular -- on this particular run, I was getting approximately 12,000 nanograms per cigarette.

QUESTION: Okay. So when you saw this level of 12,000 nanograms, what, if anything, did you do?

ANSWER: I was very surprised to see it. And I compiled the data from the -- that I had recorded off of the integrators on our detectors. And I took the data and showed it to my section leader, Robin Kinser.

QUESTION: And what, if anything, did Robin Kinser do?

ANSWER: She asked me what cigarette it was.

QUESTION: And what did you tell her?

ANSWER: I told her I did not know. I only had a code, a run code from the chamber.

QUESTION: And did you provide her with the code, the run code?

ANSWER: It was written on the notes, yes.

QUESTION: And after you told her that, what, if anything, did you do?

ANSWER: She --

QUESTION: Who is "she"?

ANSWER: Robin called Roger Comes, who was in charge of the chamber, and inquired as to what cigarette that was for that run. And I was sitting there. And she, after she finished talking to him, she told me it was a Virginia Slims.

QUESTION: And after it was discovered that this was a Virginia Slims cigarette, what, if anything, happened?

ANSWER: She said that she needed to discuss that with the Manager of Biochemical Research, which was Kathy Ellis.

QUESTION: And did anyone communicate with you further about this finding of yours?

ANSWER: Yes.

QUESTION: Who?

ANSWER: Robin.

QUESTION: And when did she do that?

ANSWER: She came back, to the best of my recollection, about a half an hour later and told me that Kathy had said to destroy the data.

http://legacy.library.ucsf.edu/tid/utq07a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/pghl0001

QUESTION: From a scientific standpoint, based on your experience as a scientist, does it make any sense to destroy that data that showed the Virginia Slims cigarette had ten times the nitrosamine level of any of the nonproduction cigarettes?

MR. FOWLER: Object to the form of the question.

ANSWER: From a scientific standpoint? No.

QUESTION: Do you know whether the information collected on the nitrosamine level of nonproduction cigarettes was ever used to imply in any way that it was equivalent to an actual test on a production cigarette?

ANSWER: Since we didn't have information on production cigarettes, I think the general assumption was that it was representative of what you -- one would expect to obtain on a production cigarette.

QUESTION: And once you had done the test on the Virginia Slims cigarette, did that change in any way the assumption?

ANSWER: It did in my mind.

QUESTION: And when you were ordered to destroy the data on the Virginia Slims

cigarette, what did you do?

MR. FOWLER: Object to the form of the question.

ANSWER: I took the chromatograms and the paper where I had tabulated or summarized the results and shredded it.

QUESTION: Was there a shredder available?

ANSWER: Yes.

QUESTION: Were you involved in any efforts to at least attempt to do research on titration levels related to cigarette inhalation and/or nicotine inhalation?

ANSWER: I was involved in some studies to determine the -- their developed procedures for the determination of nicotine retention as a function of various inhalation parameters: How deeply you inhaled, how long you held the smoke in your lungs before you exhaled.

There was some evidence that indicated that changing your smoking parameters tended to change the level of retention of smoking parameters.

QUESTION: In a layperson's terms, what does that mean?

ANSWER: In the early, early eighties, there were some studies that were done with regards to the -- what we -- what you refer to as a full-flavored cigarette or a Marlboro type cigarette, which delivered, say, 15 milligrams of tar and a milligram of

http://legacy.library.ucsf.edu/tid/utq37a00/pdf Digitized by https://www.industrydocuments.ucsf.edu/docs/pghl0001

nicotine.

And then there were studies that were done with cigarettes that were highly filtered, which delivered, like a Cambridge, which maybe only delivered a milligram and a half of tar and a tenth of a milligram of nicotine. And that people that smoked those cigarettes, the low delivery cigarettes, tended to smoke them differently than people who smoked a higher delivery cigarette. They would tend to take a larger puff, more frequently, inhale it deeper, and hold it in longer.

QUESTION: And what was the research that you were involved in or attempted to implement that was related to this?

ANSWER: This study on the way that people smoked was being done by Jan Jones. And she had developed a vest that you could wear that would actually measure the way a person inhaled and smoked.

I developed the analytical technique for measuring the amount of nicotine that was absorbed as a function of the way a person smoked. But we never -- the project was terminated at that point. So we never actually did the test on various subjects to determine what the actual rate of or amount of nicotine absorption was corresponded with the way a person smoked.

QUESTION: What kind of research did she use to obtain those preliminary findings?

ANSWER: She had people wear the vest and also come into her lab. And she had them smoke cigarettes that were unknown to them as to whether they were a high delivery or low delivery cigarette. And from the results of those studies, that's what she found.

QUESTION: Are you familiar with the term I-M-B-I-F-O? I-M-B-I-F-O?

ANSWER: N-B?

MR. RYAN: INBIFO.

ANSWER: It's I-N.

QUESTION: It's I-N?

ANSWER: Yes.

QUESTION: What is that?

ANSWER: It's a research facility in Cologne, Germany.

QUESTION: And is it a Philip Morris facility?

ANSWER: Yes, it is.

QUESTION: Did you ever see any publications related to any of the research done at that facility?

ANSWER: No.

QUESTION: Do you know whether any of the research at that facility was ever published?

http://legacy.library.ucsf.edu/tid/utq37a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/pghl0001

ANSWER: No.
Now, well, you say published. I assume that you mean in the open literature?
QUESTION: I mean in the open literature, you're correct.
ANSWER: No, I don't have any knowledge

of it.
QUESTION: Do you know what the purpose of the research was?
ANSWER: No. That -- It was my assumption -- I know that they were doing nitrosamine studies, I knew that they -- I had heard that they had done the mouse skin painting studies, they had done the Ames assay studies. What other studies they were doing, I don't have any idea.
QUESTION: The program that you and Jan Jones -- The research proposal that you and Jan Jones had made and the protocol for that proposal that you developed, with reference to that, do you have any opinion as to why it wasn't implemented?
ANSWER: I have an opinion.
QUESTION: And what is that opinion?
ANSWER: That management didn't want to know the answer.
QUESTION: Were you ever told to edit scientific reports to omit reference to subjects that might be considered sensitive?
ANSWER: Can you be more specific about "sensitive"?
QUESTION: Might have a tendency to show or indicate that cigarettes or cigarette smoke may be harmful to those who consume the product, either voluntarily or involuntarily.
ANSWER: We were instructed not to include reference to -- references to potential health effects in our -- in our

reports on discussion of results. And we were told the reason for that was that we were not measuring or not studying the health effects. We were only reporting the data that we collected as far as concentration of a particular component that we measured. So, therefore, that's what we -- the only thing we should report.
QUESTION: Were you ever told not to type reports about sidestream smoke studies that you were doing?
ANSWER: Not to type them?
QUESTION: Not to type reports, not to prepare reports about sidestream smoke studies that you were doing.
ANSWER: There were a couple of studies that I did that I was requested to only transfer information verbally or in handwritten form, yes.

http://legacy.library.ucsf.edu/tid/utq07a00/pdf
Digitized by the Legacy Industry Documents Library - https://www.industrydocuments.ucsf.edu/docs/pghl0001

QUESTION: Dr. Morgan, I introduced myself earlier. I'm Greg Fowler and I'm here representing Philip Morris.

Is it your sworn testimony that this smoking vest was completely ready to go and to test the parameters that were suggested by the study that was requested?

ANSWER: It would be my opinion that it was fully developed and ready, yes.

QUESTION: And when you talk about they didn't want to know the answer, when you offered the opinion that Philip Morris didn't want to know the answer, with regard to your

end of the experimentation, inhalation and retention, that was just speculation on your part; correct?

ANSWER: Yes.

QUESTION: Is it your opinion or do you have an opinion about whether there would be enough flavorants in a production cigarette to generate a ten times greater result?

ANSWER: Well, I think it would be very likely that it could because the flavorants were added at a level much higher than what the nitrosamine level was. And there was a large excess of alkaloid.

You're talking about a thousand, ten thousand or more times concentration of alkaloids than you are nitrosamines. So if you have just a slight -- just some excess of a nitrosating agent or a different chemical reaction occurring, the flavor could have been a potential catalyst to the production of a nitrosating agent, which may already have been there, that just needed a catalyst to generate, say, a particular free radical, it might nitrosate. That was what was so interesting there that needed to be -- that I thought needed to be investigated.

QUESTION: But that's just speculation on your part? You haven't done any research?

ANSWER: That's what I would have liked to have done.

QUESTION: Well, did you make a written request to do that sort of research to

anybody at Philip Morris?

ANSWER: No, it was just a verbal request. And it was to Robin.

QUESTION: And what did she say?

ANSWER: She said we couldn't do that.

QUESTION: When you read the results on that chromatogram and saw that the NNK levels were ten times higher than you expected, why didn't you just run off another batch to make sure it wasn't some artifact of the procedure?

ANSWER: Run off another batch of what?

http://legacy.library.ucsf.edu/tid/utq37a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/pghl0001

QUESTION: Well, just run the experiment again. Isn't that typical in science to run an experiment again when you get a surprising or unexpected result?

ANSWER: Yes.

To the best of my recollection, there were two runs that came down from the chamber. So we did have duplicate runs, to the best of my recollection. And there were three injections of each one.

I think when I saw the results and then showed them to Robin, that -- had the result of that conversation been that not to destroy the data but to investigate it further, that would have been the first thing we would have done was replicate it.

QUESTION: Well, the new nitrosamine that you discussed on direct-examination, did you conclude with a reasonable degree of scientific certainty that the unknown peaks

that you observed in connection with those sidestream smoke studies were, indeed, indicative of a new nitrosamine?

ANSWER: I did everything I could to verify it.

QUESTION: And my question is: Did you prove with a reasonable degree of scientific certainty that that's a new nitrosamine -- that was a new nitrosamine?

ANSWER: I believe so.

QUESTION: The people at Neuchatel disagreed with you; didn't they?

ANSWER: Disagreed with me?

QUESTION: Correct.

ANSWER: Not that I'm aware of.

QUESTION: They didn't look at it -- You don't believe that they looked at it and concluded that it wasn't a new nitrosamine?

ANSWER: They saw the peak and just ignored it.

QUESTION: On what basis do you say that they ignored it?

ANSWER: They said they ignored it.

QUESTION: Who said?

ANSWER: The people that ran data at Neuchatel.

QUESTION: Who were those people?

ANSWER: I think the fellow who was in charge of the chamber at that time was a fellow by the name of Manfred Spec. And when we -- when I found that peak and I went and showed it to Robin and discussed it, we

called Neuchatel and spoke with them and asked them had they run those particular types of cigarettes with the papers on them, with the low visibility sidestream papers. And they said, yes.

http://legacy.library.ucsf.edu/tid/utq07a00/pdf
Digitized by https://www.industrydocuments.ucsf.edu/docs/pghl0001

And we asked them had they observed a peak at the particular retention time. And they said, yes, we have. And we asked them that had they done anything to verify what it was. And they said, no, they hadn't.

QUESTION: The unknown peak only occurred with that experimental paper; correct?

ANSWER: That's correct.

QUESTION: So that unknown peak, that potential nitrosamine, doesn't have any relevance to any of Philip Morris' commercial products because none of them use that experimental paper; correct?

ANSWER: None of them use that experimental paper. So, yes, I would say that's probably true. It's the only experiments we ever observed that peak in.

QUESTION: Now, from the time you first saw that unknown peak in your experimentation up to the time that you left Philip Morris, that was about two and a half years or so; correct?

ANSWER: I don't remember exactly when I found it. But I think, yeah, it was probably something like that.

QUESTION: And during that two and a

half years, you had the support of your supervisors to investigate that unknown peak; correct?

ANSWER: Incorrect.

QUESTION: Why is it incorrect?

ANSWER: I feel that I, over those two and a half years, I could have identified specifically that peak and the nitrosamine had I been allowed to use the instrumentation that was available in the research center. And I was denied that.

QUESTION: And at the time that this performance appraisal was written, had you yourself concluded that what you were looking at was a new nitrosamine as opposed to a known compound?

ANSWER: I had, yes, to the best of my recollection.

QUESTION: Had you reported that conclusion to any of your superiors?

ANSWER: To the best of my recollection, yes, I had.

QUESTION: Who?

ANSWER: Everyone that signed it on the back here: Al Warfield, Robin Kinser, Richard Carchman and Kathy Ellis.

QUESTION: If you were satisfied that you had demonstrated that this was a new nitrosamine, why didn't you write up the results for publication?

ANSWER: Internal publication?

QUESTION: No, for external publication.

http://legacy.library.ucsf.edu/tid/utq07a00/pdf Stanford https://www.industrydocuments.ucsf.edu/docs/pghl0001

ANSWER: Well, we never published anything on nitrosamines externally.

QUESTION: Are you telling me that Philip Morris never published anything on nitrosamine research externally?

ANSWER: Not that I'm aware of.

QUESTION: So you're not aware of publications on nitrosamines out of Neuchatel in the 1980s?

ANSWER: I was speaking of in Richmond and the United States. And I'm not aware of any publications in the external literature out of Switzerland.

QUESTION: So the question again is if you thought this was an important new discovery, why didn't you write up a paper that you could submit to the manuscript review board for possible publication?

ANSWER: It wasn't complete.

QUESTION: So you weren't done with the research necessary to publish such results; is that right?

ANSWER: I hadn't specifically identified the chemical structure of the nitrosamine.

QUESTION: Okay. Now, you testified on direct-examination that you were instructed not to make references to potential health effects that might be related to TSNAs; correct?

ANSWER: That's correct.

QUESTION: And that's because you didn't

research the potential health effects of TSNAs; correct?

ANSWER: That's correct.

QUESTION: And for you to make statements in your research projects about possible health effects related to TSNAs would be tantamount to speculation; correct?

ANSWER: Yes.

QUESTION: So there was nothing inappropriate, was there, about telling you not to speculate about health effects that might be related to nitrosamines in your research reports; correct?

ANSWER: Not in making conclusions about health effects, no.

QUESTION: Prior to your deposition on the 20th of February, did you have any contact at all with Ron Motley, Ann Ritter, or anyone else from that law firm?

ANSWER: Prior to that deposition with regards to the deposition?

QUESTION: Well, no, just with -- in any regard.

ANSWER: I had met Ann Ritter in, I believe, the summer of '96 when I was having lunch with Ian Uydess.

http://legacy.library.ucsf.edu/tid/utq07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/pghl0001

QUESTION: With Ian Uydess.
ANSWER: And she had expressed an interest at that time that maybe I could, if I would want to -- she asked me the question if I would maybe want to help them, if they had papers, scientific papers, that they

needed interpretation of, would I be interested in maybe helping them do that.
QUESTION: So she was investigating whether you would be willing to be a scientific consultant for the Ness, Motley firm?
ANSWER: Yes, she asked me if I would want to be -- to consider that.
QUESTION: So how did you come to meet Ann Ritter? Did Ian Uydess set up a meeting so you could meet her or was it just fortuitous or what?
ANSWER: Ian set up a meeting, I think, so I could meet her. But I didn't know that he was doing that when he asked me to have lunch with him that day.
QUESTION: So he asked you to have lunch that day?
ANSWER: And surprised me with her.
QUESTION: Surprised you with Ann Ritter. And then you talked about perhaps being a consultant for the Ness, Motley firm?
ANSWER: She asked me if I would consider doing that.
QUESTION: Did you get the sense that Ian Uydess was recruiting you to work with the Ness, Motley firm?
ANSWER: Possibly.
QUESTION: Now, we talked a little bit about -- not we -- on direct-examination you talked a little bit about running experimental cigarettes versus running

production cigarettes; correct?
ANSWER: Yeah.
QUESTION: And as a scientist, if you wanted to test one parameter, one variable in a cigarette, what you would do, wouldn't you, is have two cigarettes that were exactly identical except for the variable you wanted to check; correct?
ANSWER: Probably have more than two.
QUESTION: You would have two different types?
ANSWER: I'd have a range, yes.
QUESTION: Okay. And isn't one good reason to use experimental cigarettes is that they're very uniform?
ANSWER: They are not only very uniform but you can have them made to direct your experiment toward the variable that you want to study.

http://legacy.library.ucsf.edu/tid/utq07a00/pdf Created: https://www.industrydocuments.ucsf.edu/docs/pghl0001

QUESTION: Right.
And so you use a control cigarette and then an identical cigarette with the exception of that one variable that you would test; correct?
ANSWER: Yes.
QUESTION: Can you do that with production cigarettes?
ANSWER: It would be pretty difficult.
QUESTION: Because production cigarettes aren't uniform; are they?
ANSWER: They're not as uniform because the brand wouldn't be the same. And there's

only one of them.
QUESTION: Scientifically, can you pick up a pack of Marlboros off the shelf, take one Marlboro and then another one, add the chemical to one, test both of those, and say that that's a valid demonstration of the difference or the effect of that chemical you've added to the other cigarette?
ANSWER: You could do it but not with one cigarette. What you would do is you would take a carton or two cartons of cigarettes, you would rip them open, dump all the tobacco out, blend it all together, so you had as uniform a blend as you could, divide it into two portions, spray the chemical on one portion, not spray it on the other. And then remake the cigarettes and compare them.
QUESTION: Those aren't production cigarettes when you're done with all that; are they?
ANSWER: No, they wouldn't be.
(Whereupon the readback/playback of the above-referenced testimony/videotape is concluded at this time.)
MR. STEPHEN HERMAN:
That concludes the deposition.
MR. MURRAY:
Your Honor, we have an additional deposition. And I would estimate, with reading portions of it, I would estimate we have about twenty minutes worth.

THE COURT:
Okay.
MR. MURRAY:
Would you like us to proceed?
THE COURT:
Yes.
MR. MURRAY:
Good afternoon, ladies and gentlemen.
THE JURY:
Good afternoon.
MR. MURRAY:
As you may recall, I'm Steve Murray.

http://legacy.library.ucsf.edu/tid/utq37a00/pdf
Scanned with CamScanner https://www.industrydocuments.ucsf.edu/docs/pghl0001

This is Mr. Bruce Dean. He's an attorney with the Plaintiffs Committee.

Is this mike on?

THE COURT:

No.

MR. MURRAY:

Is it now?

THE COURT:

Yes.

MR. MURRAY:

Okay. And Mr. Dean will be the answers of Mr. Samuel Chilcote, who was the President of The Tobacco Institute from 1981 until the date of this deposition which was given in Washington, D. C. on November 19, 1993.

THE COURT:

Ladies and gentlemen, as I told you with regard to the video depositions, this is another way of presenting testimony by somebody who can't be here.

And you're to take it as though Mr. Chilcote is here speaking and answering these questions and is under oath, although somebody else is doing the actual answering.

All right. Mr. Murray, proceed.

MR. MURRAY:

Thank you.

Samuel D. Chilcote, the witness named in the notice heretofore filed, being of lawful age, and being first duly sworn in the above cause, testified on his oath as follows:

QUESTION: You are the President of The Tobacco Institute?

ANSWER: Yes.

QUESTION: And for how long have you been the President of The Tobacco Institute?

ANSWER: Since 1981.

QUESTION: Let me start with your educational background because I want to get your employment history.

Did you go to college?

ANSWER: Yes.

QUESTION: What college was that?

ANSWER: Idaho State University.

QUESTION: Did you graduate?

ANSWER: Yes, sir.

QUESTION: With what degree?

ANSWER: In business.

QUESTION: And what year did you graduate?

ANSWER: 1959.

QUESTION: And did you have any formal

schooling after your graduation from college?

ANSWER: No.

QUESTION: In terms of employment or anything else, what did you do after college? Because I want to trace it up until the time

http://legacy.library.ucsf.edu/tid/utq07a00/pdf
Support: https://www.industrydocuments.ucsf.edu/docs/pghl0001

you went with the Tobacco Institute.
ANSWER: Yes, sir.
Right after graduation, I went into the service, Army. And after getting out of the Army, I went to work for Continental Oil.
QUESTION: Located where at that time?
ANSWER: In Wyoming.
QUESTION: What city in Wyoming?
ANSWER: In Lynch, Wyoming. From there, I went to work for the state.
QUESTION: Let me ask you a couple of questions about Continental. How long were you with Continental Oil?
ANSWER: A couple of years.
QUESTION: What did you do for them?
ANSWER: I was in their Production Department.
QUESTION: Did you have a title?
ANSWER: Test engineer. General administration.
QUESTION: Because you don't have a technical engineering background?
ANSWER:no. That was just for going out and seeing what production.
QUESTION: Is Continental Oil still in business today?
ANSWER: Yes.

QUESTION: Still located in the same place?
ANSWER: Well, that was just a regional office for them. They are out of Ponca City. They may have changed since. I think they were eventually bought by DuPont.
QUESTION: So in terms of employment, where did you go from Continental Oil?
ANSWER: To the State of Wyoming.
QUESTION: Worked for the State of Wyoming?
ANSWER: State department.
QUESTION: What department?
ANSWER: Department of Education.
QUESTION: Doing what?
ANSWER: In charge of their surplus property and school lunch. And later was promoted to Assistant Superintendent of Public Instruction.
QUESTION: That was a statewide job?
ANSWER: Yes, sir.
QUESTION: How long did you occupy that position?
ANSWER: Four and a half years.
QUESTION: So you were President of the Distilled Spirits Council from when to when?
ANSWER: From '77 until '81 or when I joined The Tobacco Institute.
QUESTION: Have you ever run for political office?
ANSWER: No, sir.
QUESTION: Other than the state job you

http://legacy.library.ucsf.edu/tid/utq07a00/pdf Digitized by https://www.industrydocuments.ucsf.edu/docs/pghl0001

told me about, have you ever held any appointed position in government at any level?

ANSWER: No, sir.

QUESTION: So, in other words, when you went with the Tobacco Institute, I'll refer to it as TI --

ANSWER: Right.

QUESTION: -- when you went with TI, you at that time were still President of the Distilled Spirits Council?

ANSWER: Yes.

QUESTION: Why did you leave? Why did you make that switch in '81?

ANSWER: They had a search firm which was Heidrich Struggals, the name of the search firm, who was doing a search for the cigarette manufacturers. They contacted me and wanted me to interview for the position. And I did interview for the position.

QUESTION: Did that contact come from out of the blue or had there been earlier feelers?

ANSWER: Completely out of the blue.

QUESTION: No expression of interest by you?

ANSWER: No. I was perfectly satisfied in the job I had. And I enjoyed representing the distilleries very much.

QUESTION: Now, prior to the time you interviewed for the job with TI, had you had any connection whatsoever with the tobacco

industry?

ANSWER: No, sir.

QUESTION: How long did the process take, the interviewing process take?

Page 17.

ANSWER: The interviewing process didn't take too long. It was like a month or two. As far as myself was concerned, it was time to think it over, to think about if this was the right career move or not the right career move. I was deliberating over it for several months.

QUESTION: Obviously, we know you took the job. So what was the primary motivating factor from your standpoint as to why you left the job you were happy with and earning good money to take another job in a new industry?

ANSWER: Primarily, career development. I saw this as an opportunity to run two trade groups for two different industries, which I thought in terms of resumé enhancement, experience and this kind of thing. Because I thought it would be in my best interest.

I could have stayed with the distilling interests until I retired, so to speak. But

http://legacy.library.ucsf.edu/tid/utq37a00/pdf Digitized by https://www.industrydocuments.ucsf.edu/docs/pghl0001

I was a young man, relatively young, to have had that position. And I thought, also, it was the challenge of working with new problems, new ideas. Because I had been with the other group for quite a period of time. And I wasn't quite sure I wanted to spend

another twenty years doing the same thing, the same people. So that was the motivating factor.

QUESTION: Did you have a philosophy about smoking when you were considering the new job?

ANSWER: Not really.

QUESTION: Are you a smoker?

ANSWER: Yes, I smoke a pipe, enjoy a cigar after a meal.

QUESTION: Have you ever been a cigarette smoker?

ANSWER: No, sir.

QUESTION: What is your salary with TI?

ANSWER: Four hundred fifty thousand dollars.

QUESTION: How long has it been that?

ANSWER: The last couple of years. I sort of keep getting increases as we go along based upon job performance.

QUESTION: Who evaluates the job performance?

ANSWER: The Executive Committee. Members of the Executive Committee.

QUESTION: The Presidents and CEOs of the member companies?

ANSWER: Yes, sir. They will have a discussion.

QUESTION: And do you have a written contract?

ANSWER: Yes, sir, I do.

QUESTION: Under what circumstances can

you be let go according to that written contract?

ANSWER: Well, for nonperformance of duties. I think there is six months or several months if I don't show up at the job. Obviously, anything illegal, that kind of thing. Standard employment contract.

QUESTION: Had you finished?

ANSWER: Yes.

QUESTION: Have you had pretty much the same contract since you began?

ANSWER: Yes, sir.

QUESTION: Why was Kornegay leaving? Why did they need a new President?

ANSWER: Horace had served in Congress and then joined The Tobacco Institute. He was a congressman from North Carolina. Just getting close to retirement. I think the cigarette manufacturers, staging for his

http://legacy.library.ucsf.edu/tid/utq37a00/pdf Digitized by https://industrydocuments.ucsf.edu/docs/pghl0001

eventual retirement, wanted to have me come aboard and see if I could operate as the head of their trade association.

QUESTION: Was it your understanding that was a voluntary move on Mr. Kornegay's part?

ANSWER: Oh, yes.

QUESTION: How long had he been President before you took over?

ANSWER: Probably -- This is really a guess -- ten years or so.

QUESTION: Do you know who was President before him?

ANSWER: Yes, sir.

QUESTION: Who was that?

ANSWER: It was a fellow who was a former Governor and Senator from the State of Kentucky. His name was Earl Clements, Senator Earl Clements.

QUESTION: He was a U.S. senator from Kentucky?

ANSWER: Yes.

QUESTION: Do you personally get involved with responding to media inquiries?

ANSWER: No, I'm fortunate in having spokespersons that do that. We have a Media Relations Division.

QUESTION: And they take care of that?

ANSWER: Yes.

QUESTION: Have you established a policy as to how your media relations people respond to media inquiries?

ANSWER: No. They are trained in that area. They state the industry position when asked.

QUESTION: What is the industry position, for example, if someone calls up and says, "I got a package of cigarettes in front of me, the package says cigarette smoking causes lung cancer, does it?"

ANSWER: They would -- The response would be, I would think -- I don't know -- but I would think they would be consistent with the industry position and state it in however -- As individuals, there is not a pat

response.

QUESTION: You mean it is really that free form?

ANSWER: Well, it has parameters like any statement. If you were to call me up and ask me "What about that?", I wouldn't be reading it from a piece of paper, I don't think. I would just be responding based upon the position that the industry has.

QUESTION: What is the industry position on that question? A caller calls from the New York Times or a member of the public and

http://legacy.library.ucsf.edu/tid/utq37a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/pghl0001

says, "Hey, I'm looking at a package of Marlboros and it says Surgeon General's Warning: Cigarette Smoking Causes Lung Cancer, does it?", what is the industry position answer to that question?

ANSWER: We really don't get many calls along that line where somebody would call up, I don't think. But the industry's position is that no one really knows what causes cancer. There is a risk associated with it. They don't deny that. That is how I would respond. I don't know how they would respond.

QUESTION: When technical subjects come up or a report is issued by the Surgeon General, by the EPA, by some other organization, do you have with TI a technical person, a physician, someone with a scientific background that you can say, "Hey, explain this to me in a normal everyday

language"?

ANSWER: No, we don't have any technical people on the staff.

QUESTION: If you had a technical question -- I know you haven't read the EPA report, but let's say you did -- and you came to a paragraph you didn't understand and you wanted to understand it, is there a guy at Philip Morris or R. J. Reynolds, anywhere, a doctor you would call?

ANSWER: I wouldn't call. My staff would. If they had a question concerning an industry position, they would send it to the companies who do have doctors and scientists, their organizations, and they would make the interpretation. They would tell us how they felt about the report.

QUESTION: After the President, what is the next line?

ANSWER: Field Division, Federal Relations Division, Public Affairs Division, Administration Division, and now a Media Relations Division.

QUESTION: When you travel, when you are not in the office for whatever reason, is there a particular person in charge?

ANSWER: No. Each person runs their own division.

QUESTION: How often does the Executive Committee of The Tobacco Institute meet?

ANSWER: Four to five times a year. About every other month.

QUESTION: Where are the meetings held usually?

ANSWER: Either in Washington or New York. Most of it in Washington.

QUESTION: Who attends those meetings?

http://legacy.library.ucsf.edu/tid/utq37a00/pdf Source: https://www.industrydocuments.ucsf.edu/docs/pghl0001

ANSWER: The representatives of major cigarette manufacturers that belong to The Tobacco Institute.

QUESTION: Who attends from TI other than, I assume, you do?

ANSWER: I do.

QUESTION: Other than you?

ANSWER: My division heads will attend and make reports on their respective divisions.

QUESTION: Is that the usual agenda, that your division heads will appear at the Executive Committee meeting and give a report?

ANSWER: That's correct.

QUESTION: What is usually the purpose of the Executive Committee meeting?

ANSWER: To have an understanding of what we are doing as a trade association. Like any other trade group, to say this is what we're doing, this is what is happening, activity report.

QUESTION: How much contact do you have with the Presidents and CEOs of the tobacco companies, excluding, of course, the Executive Committee meetings?

ANSWER: Well, with the members of the

Executive Committee, I will talk to them once a month. Maybe some months I'll go without talking to them until the next meeting. It's not on a regular basis.

QUESTION: Do you have regular correspondence with them?

ANSWER: Yes, some. But not -- Very little correspondence. Correspondence I would have with them would just be the correspondence that I would send to all members of the Executive Committee.

QUESTION: What is the relationship to the Council for Tobacco Research?

ANSWER: We don't have a relationship.

QUESTION: What is the Council for Tobacco Research?

ANSWER: The Council for Tobacco Research is a research organization, I guess, that looks into the scientific matters concerning cancer and other things.

QUESTION: Now, do you know that for a fact or is that something you simply assume by their name?

ANSWER: That's just an assumption. I don't know for a fact.

QUESTION: Have you ever had occasion to read any literature coming out of the Council for Tobacco Research?

ANSWER: No, sir.

QUESTION: So when you say they are a research group, you don't really know what kind of research they do?

http://legacy.library.ucsf.edu/tid/utq07a00/pdf Created: https://www.industrydocuments.ucsf.edu/docs/pghl0001

ANSWER: No.
QUESTION: Do you know Dr. James Glenn?
ANSWER: No, sir.
QUESTION: Is it fair to say that TI is a lobbying group for the tobacco industry?
ANSWER: Yes. We are their advocate before government agencies.
QUESTION: Are all staff members of TI required to adopt the tobacco industry's positions which you have already expressed?
ANSWER: No requirement. I'm not sure I understand the question.
QUESTION: Well, I assume that you would fire a person who dealt with the public or dealt with the media and said, "You know, look, I'm doing a job here but I really believe cigarette smoking does cause cancer"? That person would not work for TI very long; would he or she?
ANSWER: Well, I've never asked their personal opinion. If they were not willing to be an advocate for the position, obviously --
QUESTION: They would be gone?
ANSWER: -- they would be gone.
QUESTION: Sure.
Do you ever have occasion to read articles on the issue of smoking and health, let's say, in the Journal of the American Medical Association, The New England Journal of Medicine?
ANSWER: I'll read excerpts my people

prepare. But that's not what I put on -- put number one on -- but that is not what I put on my number one reading list.
QUESTION: You do not have anyone designated at TI, for example, if a significant article comes out in a technical journal or a medical journal to put it in understandable language for you?
ANSWER: Obviously, a Surgeon General's report, I will get an excerpt, what is the meaning.?
QUESTION: A couple page excerpt?
ANSWER: Just a memorandum.
QUESTION: Who takes the minutes of the Executive Board meetings?
ANSWER: Stanley Tempko, attorney, Covington & Burling.
QUESTION: Does he do it by shorthand or is there a court reporter present?
ANSWER: I don't know how he does it.
QUESTION: But he keeps the minutes of the meetings?
ANSWER: Yes.
QUESTION: Do you get a copy of the minutes?
ANSWER: Yes, I do.

http://legacy.library.ucsf.edu/tid/utq07a00/pdf
Digitized by the Tobacco Industry Documents Library at UCSF http://industrydocuments.ucsf.edu/docs/pghl0001

QUESTION: And are they retained?
ANSWER: Yes.
QUESTION: Who is on the budget committee?
ANSWER: You mean by name?
QUESTION: By name.

ANSWER: Harry Steele with Philip Morris, Al Peters with Lorillard, Anderson with RJR.
QUESTION: Who is on the Board of Directors of TI?
ANSWER: The board? You mean by name? Individuals? Are you talking about the Executive Committee or the board?
QUESTION: Let me understand the distinction, if any, between the Executive Committee and the Board of Directors. Are they one and the same?
ANSWER: The Executive Committee, obviously, are members of the Board. But they are board members that are not on the Executive Committee.
QUESTION: Tell me about those board members.
ANSWER: On the board?
QUESTION: Who are not also members of the Executive Committee.
ANSWER: Those board members, UST, Joe Thadeo with UST, Theo Foltz with Consolidated Cigar, these are Class B members.
QUESTION: As opposed to the Class A members?
ANSWER: Class A members are cigarette manufacturers.
QUESTION: And the Executive Committee is made up, as I understand it, solely of the Presidents and CEOs of the cigarette manufacturers?

ANSWER: The Presidents. Or each company has two members and they are designated. One may be the General Counsel. One may be the public affairs officer. The other could be a federal relations representative. That has changed over time.
QUESTION: How often does the management committee meet?
ANSWER: At least every other month.
QUESTION: How often does the budget committee meet?
ANSWER: Two to four times a year. I would say a couple times a year.
MR. MURRAY:
Thank you, Mr. Dean.
That concludes the reading of the deposition of Samuel Chilcote, Your Honor.
THE COURT:
I think we'll recess at this point,

http://legacy.library.ucsf.edu/tid/utq37a00/pdf
Digitized by the Tobacco Industry Documents Library at UCSF http://www.industrydocuments.ucsf.edu/docs/pghl0001

ladies and gentlemen. 9:30 tomorrow morning. Be prompt as you have been. Thank you.

(Whereupon the jury is excused at this time.)

THE COURT:

The jury has left the courtroom. Anything for the record by plaintiffs' counsel?

MR. MURRAY:

No, Your Honor.

THE COURT:

Defense?

MR. WITTMANN:

No, Your Honor.

THE COURT:

All right. I remind everyone that Mr. Gianna is meeting with the parties to discuss the exhibits and the demonstrative aids that are to be used with Dr. Arnett's testimony. He is scheduled tomorrow morning?

MR. BRUNO:

Yes, Your Honor.

THE COURT:

All right. We will recess for the day and turn the proceedings over to Special Master Gianna.

(Whereupon the proceedings were adjourned at 4:08 o'clock p.m.)

* * * * *

REPORTER'S CERTIFICATE

I, CHERYL FOURNET HUFFMAN, Registered Merit Reporter, in and for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that this testimony was reported by me in the stenotype reporting method, was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct

http://legacy.library.ucsf.edu/tid/utq07a00/pdf
Support: http://www.industrydocuments.ucsf.edu/docs/pghl0001

transcript to the best of my ability and understanding; that I am not related to counsel or to the parties herein, nor am I otherwise interested in the outcome of this matter.

_____

CHERYL FOURNET HUFFMAN, RMR, CRR
Registered Merit Reporter
Certified Realtime Reporter
(No. 75009)
Huffman & Robinson, Inc.
One Shell Square, Suite 250 Annex
701 Poydras Street
New Orleans, Louisiana 70139
(504) 525-1753 (800) 749-1753

http://legacy.library.ucsf.edu/tid/utq07a00/pdf
Source: https://www.industrydocuments.ucsf.edu/docs/pghl0001